

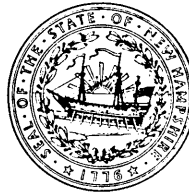
87-93

ATTORNEY GENERAL  
STEPHEN E. MERRILL

DEPUTY ATTORNEY GENERAL  
BRUCE E. MOHL

THE STATE OF NEW HAMPSHIRE

ASSOCIATE ATTORNEYS GENERAL  
BRIAN T. TUCKER  
JEFFREY R. HOWARD



N. H. STATE LIBRARY

JAN 6 1988

LAW DIVISION

THE ATTORNEY GENERAL  
STATE HOUSE ANNEX  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

January 4, 1988

John T. MacDonald, Ph.D  
Commissioner, Department of Education  
101 Pleasant Street  
Concord, New Hampshire 03301

Dear Dr. MacDonald:

By letter dated December 14, 1987, you sought our opinion with respect to whether excess 1986 Sweepstakes revenue should be distributed pursuant to RSA 284:21-j, as that statute read prior to its amendment in 1987, or whether the 1986 excess funds are governed by RSA 284:21-j, as amended by Laws of 1987, Chapter 201 and similar language in the 1988-1989 biennial budget.

It is our opinion that Sweepstakes revenues in excess of the 1986 budget estimate are properly being distributed by the Department of Education under RSA 284:21-j, as amended during the 1987 session of the Legislature, and that further distribution of excess funds has not been authorized by the Legislature.

Chapter 406, Laws of 1985, the 1986-1987 operating budget, included a budget projection of 7.7 million dollars in Sweepstakes revenue to be distributed to school districts under the mechanism provided by RSA 198:27-33. However, Sweepstakes net revenue for fiscal year 1986 exceeded the projected amount by approximately 3.1 million dollars, and on December 2, 1986, we issued our opinion that the excess income should also be distributed in accordance with the distribution formula contained in RSA 198:27-33. In that opinion, we noted that all revenues generated from Sweepstakes programs not used for administrative expenses "shall be continually appropriated for the sole purpose of funding state aid to education under RSA



John T. MacDonald, Ph.D  
Page 2  
January 4, 1988

198:27-33." RSA 284:21-j (Supp. 1986); see King v. Sununu, 126 N.H. 302 (1985).

Prior to distribution of the excess funds pursuant to our opinion, House Bill 325 was introduced. We do not believe that bill, in the form in which it was finally adopted, fairly expresses a legislative directive to distribute 1986 excess revenue as a separate windfall to the school districts. Rather, the legislative intent expressed in House Bill 325 as enacted, and in the legislative history to the act, more plainly evinces a legislative purpose to distribute all excess funds from fiscal year 1986 forward only in the amount reflected in the budget provision applicable to any particular year.

Chapter 201:1, Laws of 1987, originally introduced as House Bill 325, amended RSA 284:21-j to include the following section:

II. For every fiscal year, if the combination of the prior year's balance forward and the current year's revenue is not sufficient to fully fund the appropriation for state aid to education under RSA 198:27-33 for that fiscal year, any shortfall shall be a charge against any funds in the treasury otherwise unappropriated. Conversely, if the amount available in said special fund exceeds the amount of the legislative estimate of revenue from the fund, the excess shall be carried forward into the following fiscal year.

(Emphasis added.) The amendment thus acts as a distribution limitation on RSA 284:21-j, I, which provides that excess revenue "shall be continually appropriated for the sole purpose of funding state aid to education under RSA 198:27-33." Accordingly, if the statutory amendment applies to the excess 1986 revenue at issue, that excess should not have been, and in fact was not, distributed in fiscal year 1987 as prior law would have required. Instead, the excess would be carried forward into fiscal year 1988, along with any funds generated in fiscal year 1987. Similarly, if the amount available for distribution in fiscal year 1988, including prior year carryovers, exceeds the amount of legislative estimate of revenue, then such excess will be carried forward into fiscal year 1989. Pursuant to Chapter 201, Laws of 1987, excess revenues are thus not distributed in the following fiscal year as a windfall, but are

instead distributed in future years as part of the legislative revenue estimate which the statute now guarantees will be available to the school districts.

That excess funds generated in years commencing with fiscal year 1988 are subject to the carryforward provisions of Chapter 201, Laws of 1987, is plain, as the chapter was effective July 14, 1987. Conceivably, that effective date for the chapter could form the basis for an argument that the chapter is not applicable to excesses generated in 1986 and 1987. However, there are several reasons why it is apparent that the Legislature intended the chapter to apply to then existing excess receipts as well as future ones. First, if the amendment were intended to capture only excess revenues generated in fiscal year 1988 and beyond, the effective date of the chapter would logically have been July 1, 1987. We believe the July 14, 1987 effective date merely reflected the standard 60 day lapse between passage of a bill and its effective date, and was not intended to be dispositive of which funds were to be covered by the new statute. In fact, the prime sponsor of House Bill 325 in its original form, Representative Robinson, stated in testimony before the House Appropriations Committee on March 9, 1987 that the estimated 7 million dollar excess revenues for fiscal year 1987 could be included in the amount of expected revenue for fiscal year 1988.

A further indication that the application of the 1987 amendment was not to be limited to funds received after July 1, 1987 is the explanatory footnote accompanying the line items for Sweepstakes distribution to school districts in the 1988-1989 budget. That footnote provides in pertinent part:

... For fiscal year 1988, if the combination of prior years balance forward and the current year revenue is not sufficient to fully fund the appropriation allocation of \$19,000,000, any shortfall shall be a charge against any funds in the treasury otherwise not appropriated; conversely, if the amount available in said account exceeds the amount of legislative appropriation allocation, said excess shall be carried forward into fiscal year 1989....

Footnote accompanying Chapter 400, Laws of 1987, PAU 06 03 02 04 01 line 96. This legislative companion to Chapter 201 plainly anticipates that there may be a balance forward from distributions made in prior years. We have found nothing in

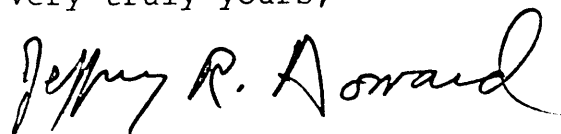
John T. MacDonald, Ph.D  
Page 4  
January 4, 1988

the 1987 legislative enactments or the legislative history of those acts expressing an intention that the 1986 excess revenue should be treated in a manner different from the 1987 surplus. On the contrary, the apparent intent of the Legislature was that both amounts should be carried forward. Indeed, in her further remarks to the House Appropriations Committee on March 9, 1987, Representative Robinson stated that, unless either the original version of House Bill 325 or the language of the footnote in the budget were passed, the intended disposition of the 1986 fiscal year excess revenues would be unclear. Since the proposed disposition included in the budget footnote was approved by passage of both the footnote and the presumably consistent companion enactment of Chapter 201, with the full support of Representative Robinson, we may conclude that she received the sought after clarification when it was decided that the amount would be carried forward. Although we have not relied on her recent statements in this opinion, we note that Representative Robinson has been quoted by the news media as stating that the carry forward of the 1986 excess revenue was precisely what she expected Chapter 201 to accomplish.

We note finally that it is our understanding, based upon information supplied by your department, that representatives of the school districts concurred in the passage of an amendment and budget provision that would result in the 1986 and 1987 surpluses being carried forward. We have not, however, relied upon this information in reaching our conclusion.

In view of our analysis of the law as set forth above, it is our advice that the department continue to distribute excess funds from fiscal years beginning with 1986 under the carry forward provision of Chapter 201, Laws of 1987. It is our further advice that a lump sum windfall distribution of 3.1 million dollars, or any other amount that is not specified in the budget should not be made to the school districts, absent legislative authorization during the 1988 session or a subsequent session.

Very truly yours,



Jeffrey R. Howard  
Associate Attorney General

JRH/der